

In the Matter of License No. 106698 and Merchant Mariner's Document
No. Z-236800-D1
Issued to: JAMES B GARDNER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

774

JAMES B. GARDNER

This appeal has been taken in accordance with Title 46 and United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 5 October, 1953, an Examiner of the United States Coast Guard at New York, New York, suspended License No. 106698 and Merchant Mariner's Document No. Z-236800-D1 issued to James B. Gardner upon finding him guilty of misconduct and negligence based upon three specifications alleging in substance that while serving as Third Mate on board the American SS IRAN VICTORY under authority of the license above described, on or about 3 September, 1953, while standing the 0000 to 0400 watch, while said vessel was at anchor in Gannet Bay, Narsarssuak, Greenland, he contributed to the stranding of the vessel by failing to properly determine her position (First Specification of negligence); he contributed to the stranding of the vessel by failing to exercise the ordinary practices of good seamanship (Second Specification of negligence); and he disobeyed the Master's written night orders by failing to call him when in doubt as to the position of the vessel or upon a change in the weather (misconduct).

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charges and each of the three specifications proffered against him.

Thereupon, the Investigating Officer and Appellant made their opening statements and the Investigating Officer introduced in evidence several documentary exhibits including the statements made by the Master and the Junior Third Mate at the preliminary investigation. Appellant agreed to the submission of the latter two statements with certain deletions which were agreed to by the Investigating Officer.

Appellant did not enter any evidence in his defense.

At the conclusion of the hearing, having heard the argument of the Investigating Officer and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that

the charges had been proved by proof of the three specifications. He then entered the order suspending Appellant's License No. 106698, Merchant Mariner's Document No. Z-236803-D1, and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of six months - three months outright suspension and three months on twelve months probation from the termination of the period of outright suspension.

From that order, this appeal has been taken, and it is urged that:

POINT A. The charges and specifications should have been dismissed for lack of specificity.

POINT B. There is no evidence that Appellant negligently failed to determine the position of the vessel.

POINT C. There is no evidence that Appellant negligently failed to exercise the ordinary practices of good seamanship.

POINT D. There is no evidence that Appellant did not obey the Master's written night orders by failing to call the Master when there was a change in the weather. The record clearly shows that the Master was called when the velocity of the wind increased although this was not contained in the written night orders.

POINT E. Appellant should have been assigned counsel since he was confused and uncertain as to his rights throughout the hearing.

POINT F. The fault, if any, is that of the Master who failed to perform his responsibilities by failing to leave specific instructions with respect to the engines and the use of the port anchor.

POINT G. The charges and specifications should be dismissed. Alternatively, the order should be reduced.

APPEARANCES: John Irwin Dugan, Esquire, of New York City, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 3 of September, 1953, Appellant was serving as Third Mate on board the American SS IRAN VICTORY and acting under authority of his License No. 106698 while the ship was anchored in seventeen fathoms of water in Gannet Bay, Narsarssuak, Greenland, awaiting berthing space and orders.

The ship had been at anchor since 31 August, 1953, with five shots (75 fathoms) of chain

to the starboard anchor, in an area which was about 1000 feet to the northeast of water which was only 3 1/2 fathoms deep. The only evidence as to the draft of the ship is that it was 20 feet, 9 inches, forward.

The width of Gannet Bay in this vicinity is approximately 3500 feet. The chart in use at the time states that there was a gravel and mud bottom; and the area where the ship was anchored is marked: "Good Holding Ground Throughout."

From 31 August, 1953, until 2 September, 1953, the weather was generally overcast and there were variable winds of about force 3 Beaufort Scale (8-12 MPH). On 2 September, the wind was ENE and it had increased in velocity to force 5 (19-24 MPH) by 1700 during the watch of the Junior Third Mate. The port anchor was made ready to let go and the anchorage bearings were checked frequently until it became dark shortly after 2230. After this time, the only reliable bearing obtainable was a radio tower beacon bearing about 120 degrees true from the ship. The ENE wind increased to a velocity of force 7 (32-38 MPH) and moderated to intermittent gusts up to a velocity of force 6 (25-31 MPH) by 2400.

The Master had previously been informed that "frequently winds blew very hard at the anchorage, but usually were of short duration"; and, on 2 September, the Master received a weather report predicting "winds of gale force abating at midnight." When darkness approached at 2230, the Master ordered the engines on 15 minutes standby notice. But when the Master noted that the wind had moderated slightly before he retired at about midnight, he ordered the engines returned to the normal 2 hour notice. The gist of the Master's written night orders was that he should be called and the engines should be put on standby if it was suspected that the ship was dragging anchor. No other orders were left with Appellant who relieved the Junior Third Mate to stand the 0000 to 0800 watch. There was no other watch stander on deck with Appellant. there was an engineer, fireman and oiler on watch in the engine spaces.

By 0300 on 3 September, the ENE wind had increased to approximately force 8 (39 to 46 MPH). Appellant did not drop the port anchor but he called the Master at 0330. The Master arrived on the bridge at 0345 when the velocity of the wind was approximately 45 MPH. At 0415, it was determined that the ship was broadside to the wind and that she had dragged anchor in a southwesterly direction. The ship was aground in the shoal water along the west bank of Gannet Bay.

The ship rested easily with a slight list on the sand, gravel and mud bottom until the wind abated. At 1416 on 4 September, the ship came free of the bottom with the assistance of a tug at high tide. The evidence indicates that there was no appreciable damage done to the hull of the ship. The Master was later informed by an MSTS Commander that other vessels had grounded in the same area.

There is no record of prior disciplinary action having been taken against Appellant who has been sailing in licensed capacities since 1945.

OPINION

The record presented here does not contain evidence upon which to base more detailed findings of fact as to what occurred between 0000 and 0415 on 3 September, 1953, while Appellant was on watch. In view of this void in the evidence and conclusions which are reasonably to be drawn from the evidence presented, it is my opinion that the charges and specifications are not supported by substantial evidence.

The misconduct specification must be dismissed because, as stated in Point D in the appeal brief, the Examiner found the specification proved on the basis that Appellant failed to call the Master "when there was a change in the weather" but the Master's written night orders did not contain any reference to a change in the weather. And the evidence clearly shows that Appellant did, in fact, call the Master at 0330 - three-quarters of an hour (according to the Master's own entry in the ship's Deck Logbook) before it was realized that the ship was aground.

As to the allegation in the misconduct specification that Appellant failed to call the Master when Appellant was "in doubt as to the position of your vessel," there is no evidence that either Appellant or the Master suspected that the vessel had dragged anchor. This is substantiated by the Master's own testimony that he made no attempt to use the port anchor or to get steam on the main engines prior to 0430 although, apparently, the grounding occurred after the Master arrived on the bridge at 0345. (See Master's entry in Official Logbook Exhibit A: "At about 0400 during a full gale vessel drug anchor and grounded.")

With respect to the first negligence specification which alleges that Appellant failed to properly determine the position of the ship, it is undisputed that this was a poor anchorage area and that the statement on the chart, that it was "Good Holding Ground Throughout," was misleading. The Master testified that he later found from experience that this "definitely [was] not good holding ground." This is supported by evidence that other vessels had run aground here.

The Master also testified that the only dependable aid to navigation after dark was the radio tower beacon. The location of this light cannot be determined from the chart but the indications are that it was at one of two locations both of which are most than two miles distance from where the ship was anchored. As a result, a change in the bearing of the light of only two degrees was sufficient to account for the change in the position of the vessel from where she was heading into the ENE wind (before her anchor commenced to drag) to her position after she was aground. Such a small change of bearing was not sufficient to enable immediate detection of the fact that the vessel was dragging anchor. And considering the length of anchor chain which was out, the distance the ship had to drag anchor in order to become stranded was considerably less than the 1000 feet distance from her anchor to the shoals. Hence, Appellant was not negligent in not determining the position of the ship by means of taking bearings since there were no adequate means available by which to perform this function.

Possibly, Appellant could have determined the position of the vessel to some extent if he had made use of a drift lead. But it has been stated that there is divergence of thought as to the efficacy

of this method (State Road Department of Florida et al. v. United States (D.C.Fla., 1949), 85 Fed. Supp. 489, 1949 A.M.C. 1638, aff. 189 F.2d 591, cert. den. 342 U. S. 903); and that the drift lead is useful though not always to be trusted. Knight's Modern Seamanship, 11th Ed., p. 227.

For these reasons, Appellant's Point B is upheld and the first negligence specification is dismissed.

I also agree with Appellant's Point C in which he contends that there is no evidence that Appellant negligently failed to exercise the ordinary practices of good seamanship as alleged in the second negligence specification.

A comprehensive review of this subject, based on the testimony of experienced mariners, is contained in State Road Department of Florida et al. v. United States, supra. Therein it is stated that winds in intermittent gusts are more apt to cause a vessel to break out and drag anchor than are steady winds equal in velocity to the peak gusts; and that it is much easier to prevent a ship from dragging anchor by taking precautions before the anchor is broken out and the ship has begun to drag than to fetch up the ship after it has begun to drag. The rules of good seamanship set forth, in this case, are as follows:

1. Determine whether the ship is dragging anchor by feeling the anchor chain to tell whether it is quivering as is usual when the anchor drags along the bottom.
2. Maintain an alert deck watch composed of at least a licensed deck officer and A.B. seaman; and also an engine crew composed of a licensed engineer and fireman.
3. Order steam on the main engine.
4. Pay out additional anchor chain.
5. Drop a second anchor.

As to the steam on the engines, the evidence shows that the Master ordered the engines to be placed on two hours notice before he retired at about 2400 when the gusts of wind had a velocity of as much as 30 MPH. Appellant did not have the authority to counteract the Master's order at 2400; and the Master had been called and was back on the bridge by the time the wind had increased to a velocity of 45 MPH at 0345. Therefore, it is believed that Appellant was not negligent in this respect.

The testimony of the Master indicates that Appellant was the only person standing watch on deck although there was an adequate watch maintained in the engine spaces. Presumably, Appellant had no control over the number of watch standers. Therefore, he cannot be held to have been negligent on this basis.

The evidence does not disclose whether Appellant made any attempt to determine whether the ship was dragging anchor by feeling the anchor chain. But even if he occasionally checked the chain, he apparently had no seaman available to properly perform this function by keeping a constant watch on the anchor chain. And since the engines were on two hours notice, it would have served little purpose to detect a tremor on the anchor chain since the ship would probably have been

aground before adequate preventive measures could have been taken after the anchor commenced dragging.

In connection with the question as to whether Appellant was negligent when he failed to pay out more chain on the starboard anchor, it is noted that, according to one widely accepted standard, the ship did not have out a sufficient scope of anchor chain at any time after she anchored. As set forth in Knight's Modern Seamanship, a ship should have out a length of chain equal to seven times the depth of the water - in ordinary weather. This standard is quoted in Clyde Steamship Co. v. United States (CCA 2, 1928), 27 F. 2d 727, and The British Isles (CCA 2, 1920), 264 Fed. 318. Nevertheless, the IRAN VICTORY was anchored in seventeen fathoms of water with only seventy five fathoms of chain to the starboard anchor with winds as high as force 7 (32-38 MPH) prior to the time when the Master retired. In the Clyde SS Co. v. U.S., supra, the court held that good seamanship required compliance with Knight's familiar rule as to the length of chain to be used. And in The Djerissa (CCA 4, 1920), 267 Fed. 115, a vessel was held at fault for a collision when she failed to put out a second anchor and pay out the proper amount of chain on both anchors before the storm commenced when the indications of a storm had been apparent for some time before it commenced.

The record in this case is void of any explanation as to why more anchor chain was not put out when the vessel anchored; or, at the latest, when the wind began to increase in velocity on the evening of 2 September. Possibly, there was some undisclosed reason for the failure to comply with this rule of good seamanship. In any event, it is my opinion that it would be reasonable to conclude that Appellant was guilty of negligence on this account when others on the ship would be equally at fault in the absence of some satisfactory reason for not using more anchor chain. I conclude that this was a fault which amounted to an error of judgment by Appellant since, presumably, he was influenced by the prior omission to put out more anchor chain.

There are numerous court decisions which have held vessels at fault, under the rules of good seamanship, when danger from winds of high velocity is apparent and the vessels have failed to take the required anticipatory precaution of putting out both anchors before the ships commenced to drag anchor. The Anerly (D.C.N.Y., 1893), 58 Fed. 794; The Carl Konow (D.C. Pa., 1894), 64 Fed. 815; The Severn (D. C. Va., 1902), 113 Fed. 578; The Terje Viken (D.C. Va., 1914), 212 Fed. 1020; The Jason (D.C.Va., 1919), 257 Fed. 438; The Djerissa, supra; The Forde (CCA 2, 1919), 262 Fed. 127. In the latter case, a vessel was held at fault for dragging anchor and colliding with another vessel. It was stated that in view of the doubtful weather conditions and known indications of danger of dragging anchor, ordinary prudence required that the Master should not have retired for the night without putting out the second anchor. Under the views expressed in these cases, the port anchor of the IRAN VICTORY should have been dropped early on the evening of 2 September. Since this was not done, it is very doubtful if the secondary responsibility of Appellant, to drop the port anchor at some indefinite time between 2400 and 0345, amounted to negligence rather than an error of judgment on his part.

For the above reasons, I conclude that Appellant did not negligently fail to exercise the ordinary practices of good seamanship. Preventive and precautionary action to guard against the

anchor dragging should have been taken when the danger originated prior to the time when Appellant commenced his watch. It was the Master, and not Appellant, who had received the report predicting winds of gale force. Consequently, the charges and specifications against Appellant are dismissed.

ORDER

The Order of the Examiner dated at New York, New York, on 5 October, 1953, is VACATED, SET ASIDE and REVERSED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 9th day of November, 1954.